

WITNESS PREPARATION

- Avoid talking about the case anywhere outside the deposition room or courtroom where the judge or other side may overhear you. Don't discuss the case with anyone other than your attorneys, or as directed by your attorney.
- Before you testify, try to picture the scene, the objects at the scene, the times and distances involved and just what happened so that you can recall more accurately when asked. But do not memorize what you are going to say because you may become confused if you forget any part of your memorized statement. For a deposition, it's usually best not to review any files or documents. For a trial, your trial attorney will discuss preparation with you.
- Be prepared for basic questions – your name, your address, your educational background, your job title and experience.
- **Be truthful.** You are under oath when you testify in court or on deposition. Testifying falsely under oath can subject you to criminal penalties for perjury. Sometimes being truthful will require you to say "I don't know" or "I don't remember." When you tell the truth, no one can confuse you!
- Give **positive, definitive answers** when possible. Avoid saying "I think" or "I believe" if you can be positive. However, if your answer is only an estimate about distances or time or other such factors, be sure to state it is only an estimate. If asked about details you do not remember, simply say "I don't remember." Unless certain, do not say "That's all the conversation" or "nothing else happened." Instead say "That's all I recall" or "That's all I remember happening." It may be that after more thought or another question, you will remember something important.
- **Be courteous.** Being courteous is one of the best ways to make a good impression on the court and the jury. Respond with, "Yes sir" and "No sir" and address the judge as "Your Honor. Courtesy includes dressing neatly and professionally.
- **Be attentive.** You must be alert when you are in the witness chair so that you can hear, understand, and give an intelligent answer to every question. If the judge or jury gets the impression you are indifferent, they may not believe your story.
- **Think before you speak.** Give your attorney an opportunity to pose an objection, if necessary, and take a moment to think. Hasty and thoughtless answers may be incorrect and may cause problems. This is particularly true when the opposing lawyer is cross-examining. The cross examiner may ask you leading questions -questions which suggest only one answer. Make sure you understand the question; then answer it as accurately as you can. If you do not know the answer or cannot remember, say so.
- **Speak clearly.** Nothing is more annoying to a court, jury, and lawyers than a witness who refuses to speak clearly enough to be heard. An inaudible voice not only detracts from the value of your testimony, but it also tends to make the court and jury think that you are not certain of what you are saying. Everyone in the courtroom is entitled to know what you have to say, and the court reporter who is recording the proceedings must be able to hear all your testimony. Don't chew gum.
- **If you don't understand a question, ask that it be explained.** Many times, a witness will not understand a question that has been asked, but will try to answer it anyway. This is confusing to the court, the jury, and the lawyers, and it extends the

time a witness will be testifying because the lawyers must go back and correct the misinformation.

- **Answer all questions directly!** Too often, a witness will be so anxious to tell the story that he or she will want to get it all told in answer to the first question. Listen to the question. If you can answer it with a "yes" or "no," do so.
- **Never volunteer information.** Answer ONLY the question that has been directed to you. It's the lawyers' job to get the information they need from you – you have no obligation to help. The information that you volunteer may have no bearing on the case and may delay the proceedings, or may suggest other areas for questions.
- **Stick to the facts!** Don't guess or speculate! The only thing you will be permitted to testify to is what you know personally. What you know is important; what you think is not.
- **Be helpful, not funny.** A trial is an important matter to the parties involved. Their money, property, or freedom may be risked by your testimony. Don't try to be a comedian.
- **Be fair.** Though you may be testifying for a party or a friend whom you would like to see win, don't color your testimony or try to overdo it. You will do the best service by making your testimony as objective as possible.
- **DO NOT ARGUE** with the defense attorney. He/she has the right to question you. If you give him/her smart talk or evasive answers the judge may reprimand you.
- Ordinarily, your attorney will tell you NOT to answer a question if there is something improper about it. If you do not want to answer a question, do not ask the Judge whether you must answer it.
- **Never lose your temper!** A witness who gets angry is at the mercy of the cross-examiner. The witness appears to be prejudiced, and is less likely to be believed by judges and juries. Keep your temper. Your service as a witness will be more pleasant, and your testimony will be more valuable.
- Do not look at the attorney for help when you are on the stand. If you look at the prosecutor when a question is asked on cross-examination or for their approval after answering a question, the jury or judge will notice and it will create a bad impression. Look at the questioner during a deposition, at the jury if it is a jury trial, or the judge if it is a bench trial, when answering the questions.
- Do not let the other side's attorney lure you into thinking he is your friend who is trying to help you. Don't let silence or looks suggest to you that you need to say more. Follow the line of questions carefully.

Types of questions that are tricky and may contain traps are questions that:

- Contain poorly defined terms: "Isn't it true that the account was doing **fine** until that contract was signed?"
- Contain emotionally charged terms: "Mr. Jones was **unreliable**, wasn't he?"
- Ask: "Is that all?"

- Demand a Yes or No answer.
- Ask multiple questions.
- Lead you: "Wasn't that a proper course of action?"
- Are repeated.
- Contain terms such as "always" or "never."
- Are argumentative: the question disputes previous answers more than once or twice.
- Assume facts not in evidence. For example, "What did you do when you saw the client get worse after three days of your treatment?"Assumed facts: (1) The client really did cooperate with the three days of treatment; (2) The client really did get worse; (3) You really did see the client getting worse.
- Define proper conduct or professional performance.
- Ask what publications you: read, rely on, trust, or consider authoritative.
- Are hypothetical.
- Are not specific enough, or ask for a narrative answer.
- Misquote you or someone else.
- Ask you testify as to the accuracy of something you heard or read... hearsay evidence.
- Are complex, ambiguous, or contain double negatives.
- Ask you to speculate or comment on things you are not sure of.
- Ask you for rough (or your best) estimates of quantities you are not sure of.
- Ask you if your testimony is based entirely on written records, concerning issues you cannot remember anything about.
- Make a false statement.
- Seek to place blame.
- Try to make you a mind reader: "Why did the driver turn when he did?"
- Use words or phrases with specific legal meanings: standard of care, basis for opinion, proximate cause, breach of duty.
- Ask you to judge another person. There is a way to objectively describe persons without seeming to be critical.
- Use words having several meanings. For example, in law, there are specific meanings of the words possible, probable, following, and likely. These are not always the same as the common or the scientific meanings of these words.
- Refer to inaccurate, unfamiliar or unknown documents.